

The opinion in support of the decision being entered today was **not** written
for publication and is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

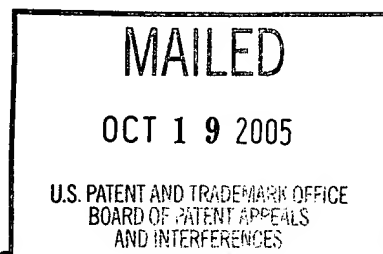
**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte PAUL PAZANDAK

Appeal No. 2005-2504
Application No. 09/247,209

ON BRIEF

Before DIXON, LEVY, and NAPPI, **Administrative Patent Judges.**
DIXON, **Administrative Patent Judge.**



DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claim 3, which
is the sole claims on appeal in this application.

We AFFIRM.

BACKGROUND

Appellant's invention relates to type-specific objects from markup and web-oriented languages, and systems and methods therefor. An understanding of the invention can be derived from a reading of exemplary claim 3, which is reproduced below.

3. A method of parsing an XML document, comprising the steps of:
acquiring the XML document via a computer;
associating the XML document with a call via the computer;
calling a code, via the computer, that operates on XML of the XML document; and
creating, via the computer, a type specific object from the XML- document from the code.

The prior art reference of record relied upon by the examiner in rejecting the appealed claim is:

Davidson et al. (Davidson)	6,083,276	Jul. 04, 2000
		(Filed Jun. 11, 1998)

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the final rejection (mailed Sep. 15, 2003) and the answer (mailed Feb. 8, 2005) for the examiner's reasoning in support of the rejections, and to the brief (filed Jul. 19, 2004) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art reference, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we make the determinations which follow.

35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness. **See In re Rijckaert**, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. **See In re Lintner**, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Furthermore, the conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. **See In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight

reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. **See In re Warner**, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), **cert. denied**, 389 U.S. 1057 (1968). Our reviewing court has repeatedly cautioned against employing hindsight by using the appellant's disclosure as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. **See, e.g., Grain Processing Corp. v. American Maize-Prods. Co.**, 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

When determining obviousness, "the [E]xaminer can satisfy the burden of showing obviousness of the combination `only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.'" **In re Lee**, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing **In re Fritch**, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). "Broad conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" **In re Dembiczak**, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). "Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact." **Dembiczak**, 175 F.3d at 999-1000,

50 USPQ2d at 1617, citing **McElmurry v. Arkansas Power & Light Co.**, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Further, as pointed out by our reviewing court, we must first determine the scope of the claim. “[T]he name of the game is the claim.” **In re Hiniker Co.**, 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998). Therefore, we look to the language of independent claim 3 as to recited limitations. Appellant argues that there are “significant advantages to Applicant’s simplified parse system and method. Particularly, the parse is automatically possible because of the calls, codes, and type specific object creation, without intermittent steps of retrieving data and creating a parse tree. Applicant’s invention is a simplified, more straightforward approach, that obtains results without additional intervention or manual effort.” (Brief at pages 4-5.)

The examiner maintains that Davidson teaches all of the claim limitations recited in claim 3 and more. (Final rejection at pages 3-4 and answer at pages 3-4.) Additionally, the examiner maintains that “[e]ven though Applicant is partially right in arguing that Davidson teaches additional step of creating the parse tree to obtain corresponding instance of classes while applicant’s invention does not create a parse tree, the **claimed invention** does not positively recite parsing without creating the parse tree and open-ended claim[ed] language ‘comprising the steps of’ includes all alternative methods and therefore Davidson is interpreted to broadly teach claimed invention.” (Answer at page 4.) We agree with the examiner that the instant claim

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language does not preclude the additional step of creating a parse tree. Therefore, we do not find the argument persuasive, and we will sustain the rejection of independent claim 3.

CONCLUSION

To summarize, the decision of the examiner to reject claim 3 under 35 U.S.C. § 103 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED



JOSEPH L. DIXON
Administrative Patent Judge



STUART S. LEVY
Administrative Patent Judge



ROBERT E. NAPPI
Administrative Patent Judge

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